IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/10/2004

CORAM

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N. KANNADASAN

CRL. APPEAL No. 870 of 2002

Sasikumar ..Appellant

-Vs-

State rep. by
Inspector of Police,
Karungalpalayam Police
Station, Erode District.
(Cr.No.436/2000) ..Respondent

Prayer: Appeal against the judgment of the learned Principal Sessions Judge, Erode District in S.C. No. 138/2001 on 30.4.2002.

!For Appellant :: Mr.C.R. Malarvannan
for Mr.Mohideen Basha

^For Respondent :: Mr.V.Arul, GA (Crl.Side)

:JUDGMENT
(Judgment of the Court was delivered by R.Balasubramanian,J)
The appellant in this appeal is the sole accused in S.C. No. 138 of 2001 on the file of the Court of Principal Sessions Judge, Erode. In that case, he was tried for an offence under Section 302 I.P.C. (2 counts) and on being found guilty, stands sentenced to undergo imprisonment for life on each count with a further direction that the sentence has to run concurrently. He is challenging that conviction by filing this appeal. Heard Mr. C.R. Malarvannan, learned counsel for the appellant and Mr.V. Arul, learned Government Advocate for the State.

2. The case of the prosecution is that at about 2.15p.m. on 22.5.20 00, the accused, by mixing nitrite poison in a cool drink with the brand name "Mirinda" and by adding it to liquor namely brandy, made two persons by name Karuppannasamy and Ponnusamy consume it. As a result thereof, both of them died. To substantiate the charge, the prosecution examined P.W.s 1 to 24 besides marking Exs-P1 to P34. The accused neither examined any witness on his side nor brought in documentary evidence. In this judgment, we will refer Karuppannasamy as deceased No.1 (in short "D1") and Ponnusamy as deceased No.2 (in short "D2). The case of the prosecution as spoken to by the

witnesses, in short, is as hereunder:
P.W.1 is the mother of D2. D1 and D2 are working in an export printing factory. It belongs to P.W.4. Both the deceased have been working there for almost 15 years as "Dye Masters". The accused is employed there as a supervisor. At 8a.m. on 22.5.2000, D2 went for his work. At 3.30p.m., the accused came home and informed P.W.1 that D2 is lying unconscious in the factory. She and others went to the factory where they found D1 and D2 lying dead with froth through their mouth. She went to the Police Station immediately and gave the complaint which stands marked as Ex-P1. She had indicated that she has suspicion regarding the death of her son (D2). P.W.2 is the father of D1 - he being the eldest son. P.W.2's son went for work on the morning of the occurrence day and at 5p.m. on that day, he came to know that his son as well as P.W.1's son died. Immediately, he went to the work place where he found both D1 and D2 lying dead with froth through their mouth. He came to know that Mirinda cool drink mixed with nitrite poison had been consumed by both of them, which resulted in their death. He also came to know that the accused is responsible for those deaths. It is his further evidence that the accused was having an illicit affair with a girl called Sumathi, who was also working in the same factory. P.W.3 is a woman worker in the same factory where both the deceased and the accused were working. She is not an eye witness to the occurrence. She would state that on coming to know about the event, she went to the factory where she observed the dead bodies. She would also say that the accused had an illicit affair with Sumathi and that Ponnusamy (D2) is the cousin of Sumathi. Both the dead had vomitted near the water tank. Both the deceased used to make fun of the accused as an handicapped person and she came to know that both the deceased had consumed medicine mixed with nitrite poison and they died.

3. P.W.21 is the Sub Inspector of Police in the investigating police station. On the occurrence day evening, P.W.1 appeared before him and gave a written complaint, which he registered as Ex-P1 in his police station crime No. 436/2000 under Section 174 Cr.P.C. Ex-P30 is the printed First Information Report prepared by him and he sent the material records to the court as well as to the higher officials. P. W.23 is the Inspector of Police holding additional charge in the investigating police station. On receipt of the material records sent by P.W.21, he commenced investigation and reached the scene of occurrence at about 7p.m. In the presence of P.W.7 and another, he prepared Ex-P2 - Observation Mahazar and Ex-P31 - rough sketch. He recovered the vomitted material available at the scene of occurrence, which stands marked as M.O.1 under Ex-P3 attested by P.W.6 and another. Between 8.30p.m. and 11.30p.m., he conducted inquest over the dead body of D1 in the presence of panchayatars and witnesses. During inquest, he examined P.W.2 and others and recorded their statements. Ex-P32 is the inquest report. Then, he conducted inquest from the midnight of that day till 3a.m. on the following morning over the dead body of D2 in the presence of panchayatars and witnesses. Ex-P33 is the inquest report. Then, he sent both the dead bodies through P.W.s 19 and 20 respectively -police constables for postmortem. He examined P.W.s 1, 3,7 and others and recorded their statements. Then, he altered the section of offence from one under Sectio n 174 Cr.P.C. to one under Section 302 I.P.C and prepared Ex-P34, the altered express First Information Report, which he sent to the court. He

examined further witnesses and recorded their statements.

4. P.W.19 accompanied the dead body of D2 for postmortem.
He was present throughout postmortem. After postmortem, he removed M.O.s 7 and 8 from the dead body and handed over the same to the investigating officer with his special report Ex-P28. P.W.20 accompanied the dead body of D1 for postmortem and he was present throughout postmortem. He removed M.O.s 9 to 11 from the dead body and handed over the same to the investigating officer with his special report Ex-P29. P.W.16 is the doctor, who did postmortem on both the dead bodies on receipt of the dead bodies and requisitions Exs-P11 and P14. He commenced postmortem on the dead body of D2 at 9a.m. on 23.5.2000 and found various symptoms on the dead body as noted by him in Ex-P12, the postmortem report. The noted symptoms are as hereunder:
"External Injuries:
+ x + cm abrasion seen in front of neck middle third. Blisters found over abdomen and left arm and back of right side washerman hand and feet present.
Internal Examination:
Heart: 200 gms, chambers empty.
Lungs: Right 550 gms, left 500 gms both floats on water congested and cut section froth present.
Hyoid: Intact
Stomach: 100 ml of liquid material found.
Liver: 1400 gms
Spleen: 100 gms
Kidneys: both 150 gms, congested
Bladder: empty
Brain: 1400 gms congested
Spinal column: Intact
Tracheo bronchial tube: froth present."
The doctor is of the opinion that the deceased would appear to have died 18 to 20 hours prior to autopsy. His final opinion is Ex-P13 on the cause of death which would show that death was due to nitrite poisoning. Then, he commenced postmortem on the dead body of D1 at 8.45 a.m. On 23.5.2000. During postmortem, he found various symptoms as noted by him in Ex-P15 and they are as hereunder:
"Appearances found at the postmortem: Body of a male, well nourished symmetrical, lying on its back in G.H. Mortuary with eyes congested and closed, teeth complete, tongue inside the mouth with jaws clenched. Blood stained froth found from both nostrils and mouth. Washerman hand and feet present. Blisters found over left ankle to leg and thigh - Blisters found over neck and right thigh - Blisters found over hip to left upper arm. No external injury made out.
Internal Examination:
Heart: 200 gms, chambers empty.
Lungs: Right 500 gms, left 450 gms congested floats on water, froth present in the entire tracheo bronchial tube.
Hyoid: Intact
Stomach: Contains 100 ml semi solid liquid material
Liver: 1400 gms congested.
Spleen: 100 gms
Kidneys: 150 gms both, congested

Bladder: empty
Brain: 1400 gms congested
Spinal column: Intact"
His final opinion is Ex-P16. According to him, death would have occurred 18-20 hours prior to autopsy due to nitrite poisoning.

5. P.W.24 is the regular Inspector of Police in the investigating police station. He took charge on 25.5.2000 and verified the investigation already done by P.W.23. Since the witnesses already examined by P.W.23 repeated the same thing to him when he examined them, he did not record their statements once again. He examined P.W.s 1 to 5 and others and recorded their statements. At about 11p.m in the night on 25.5.2000, on information given by P.W.12, he went to his house along with P.W.13 and another where he took custody of the accused and received his confession statement already recorded by about 11.30p.m. He examined P.W.13 and recorded his statement. Pursuant to the admissible portion of the confession statement of the accused namely Ex-P5 , he went to the scene of occurrence from where M.Os. 2 to 6 came to be recovered under Ex-P6. P.W.13 had spoken about the above referred to facts. Then, the case properties and the accused were brought to the police station. The accused was sent for judicial remand and the case properties were sent to the court under Form 95. Then, he sent a requisition to the court to subject the same for chemical examination. P.W.18 is the magisterial clerk, who speaks about the receipt of the case properties and Ex-P22, the requisition given by the investigating officer. As an enclosure to court's letter Ex-P20, the case properties were sent for chemical examination. Ex-P23 is the requisition given by the investigating officer to subject the viscera of both the deceased to chemical examination and they were also sent as an enclosure to court's letter Ex-P18 for scientific examination. Ex-P24 is the requisition given by the investigating officer to subject the hyoid bone of both the deceased for examination and as an enclosure to court's letter Ex-P25, they were sent for examination and Ex-P26 is the hyoid bone report of D2 and Ex-P27 is the hyoid bone report of D1. He gave a requisition to the court to record the statements of P.W.12 and others under Section 164 Cr.P.C. Accordingly, P.W.15, Judicial Magistrate No.1, Erode, recorded the statements of P.W.12 and others. The statements are Exs-P8 to P10. Ex-P7 is the requisition to the court to record the statements of those witnesses under Section 1 64 Cr.P.C. Thereafter,P.W.24 continued the investigation by examining further witnesses and recording their statements.

6. P.W.4 is the owner of the printing press where the deceased and the accused were employed. P.W.5 is his sister's son. P.W.5 is said to be managing the affairs of the printing press. P.W.4 would depose about the employment of both the deceased and the accused and that he is not in arrears of any salary payable to any of the deceased. He would also state that 2 months prior to the day of occurrence, the accused complained to him that both the deceased are making fun of him calling him as a disabled person and he called all the three and advised them to live in harmony. He would state that on the day of occurrence, he was not in the factory as he had gone out to get donations for the ensuing temple festival and at about 3p.m. on that evening, his wife P.W.10 informed him over phone that Karuppannasamy(D1) and Ponnusamy (D2) had died in the factory. He went to the police station

straightaway after informing P.W.5. P.W.5 would depose as to how he used to manage the affairs of the printing press. He would state that on the day of occurrence, he was in the factory till about 2p.m. and P.W.6, who had come from Tiruppur for some business purpose was also there. He would also depose that about 3.45p.m., the accused informed him over telephone about the deaths in this case and he went to the factory at about 4p.m. where he found both the victims lying dead. He asked the accused to go and get an autorickshaw and the autorickshaw driver refused to transport dead bodies. He went to the police station at about 5.30p.m. to 5.45p.m. and complained about the incident. P.W.6 would depose that he went to the factory in question for business purpose at about noon and he was in the factory till about 2 p.m. along with P.W.5. He would further state that then he went to sleep from 2.15p.m. to 2.45p.m. and when he woke up at 2.45p.m., he found both the deceased working and reminding them to continue the work, he went to sleep once again. At about 3.30p.m., the accused told him that both the deceased after consuming brandy are lying drowned in the water tank. He observed both the dead bodies drowned in the water tank and the bodies were taken out of water and placed on the floor. He informed P.W.5 about this. P.W.7 witnessed the preparation of Ex-P2 - Observation Mahazar and recovery of M.O.1 under Ex-P3. P.W.8 is the autorickshaw driver, who went to the factory in question and on seeing the dead bodies, refused to transport it. P.W.9 would depose that at about 2p.m. on 22.5.2000, he was in his shop and at that time, he saw the accused passing his shop towards south. On questioning, he said that he is going to take cool drinks. At about 2.30p.m., the accused returned having a 500ml Mirinda cool drink bottle and 180ml brandy bottle in his hand. When asked, he said it is meant for "Dye Masters" (obviously D1 and D2). He came to know in the evening about the deaths and he went and observed the bodies. P.W.10 is the wife of P.W.4, who would depose that she passed on the information over telephone to her husband. She would state that she heard that the accused is having an illicit affair with a girl called Sumathi working in the factory and that P.W.3 informed her about the same. P.W.1 1 had been examined to show that he went along with P.W.4 on the day in question to collect donations for the ensuing temple festival and that P.W.10 informed P.W.4 over phone in the evening about the occurrence. P.W.12's father is the landlord of the building where P.W.4 is having the factory. P.W.12 used to come and collect rent sometimes. He would state that at about 9p.m. or 9.15p.m. on 25.5.2000, when he was in his house along with his friend Madheshwaran, the accused appeared and confessed to both of them about the murders he had committed. He reduced into writing whatever the accused told him and the said statement is Ex-P4 duly signed by the accused, P.W.12 and his friend as well. P.W.14 would state that at about 4p.m. on the occurrence day, when he was in the godown, he saw the accused coming in a hurry informing him that both the victims in this case are lying in the water tank. P.W.17 is the scientific expert, who speaks about the scientific tests done by his laboratory on the viscera of D2 and Ex-P17 is the report. He also deposed about the scientific tests done by him on the viscera of D1 and Ex-P19 is the report. Exs-P16 and P20 are the respective requisitions sent by the court. Ex-P21 is his report relating to his examination of other incriminating objects sent to him for examination. P.W.22 had been examined to show that on the day of occurrence, at about 2.15p.m., he sold 180ml of brandy to the accused. P.W.24, after completing the investigation, filed the final report

in court against the accused on 30.8.2000 under Section 302 I.P.C.

7. As already stated, the learned Trial Judge, accepting the case of the prosecution as true, convicted the accused for the offence of murder (2 counts) and sentenced him to undergo imprisonment for life on each count - sentence to run When the accused was questioned under Section 313 Cr.P.C. on the basis of the incriminating materials made available against him, he denied each and every circumstance put up against him as false and contrary to facts. He had not examined any witness on his side. No documentary evidence is also produced on his behalf.

8. Mr.C.R. Malarvannan, learned counsel appearing for the appellant would submit that the evidence on record do not show that the accused was in possession of the poison consumed, which he is shown to have administered to the victims. This being the most important material in a case of death due to poisoning and if it is absent, the court must necessarily acquit the accused. He would also submit that from the evidence of P.W.s 5 and 6, it is clear that the accused was not found to be at the scene of occurrence - factory during the relevant time and when especially, P.W.6 had seen both the deceased alive at about 2.45p.m., it must be shown by the prosecution that between 2.45p.m. and 3.30p.m., at which point of time P.W.6 came to know about the twin deaths, that the accused was at the scene of occurrence or anywhere near about it and he administered the poison, which is once again wanting in this case. To show the relevant material that must enter the mind of the court while considering the case of murder by poisoning, the learned counsel relied upon a number of judgments about which we will refer a little later. Learned counsel would also submit that the extra judicial confession Ex-P4 stated to have been recorded by P.W.12 is so very artificial and unnatural and no court of ordinary prudence, having utmost caution, would accept it as a true version. In other words, the learned counsel would submit that there are inbuilt materials in Ex-P4 itself which would show that the confession statement is definitely false, improbable and in any event, it is a tutored one. We heard the learned Government Advocate on all these points, who would state that there is nothing to doubt Ex-P4 and the circumstances under which it had come to be reduced into writing speaks about the genuineness of the said statement. There is no reason as to why this court should disbelieve P.W.12 before whom the accused had given the extra judicial confession. The accused is not disputing that he is employed in the factory and he admits that he was present in the factory at 2p.m. on the day in question. Therefore, a duty is cast upon him to explain how the twin deaths in this case had occurred especially, when they are his colleagues. The learned Government Advocate would therefore request us to confirm the judgment under challenge.

9. Having regard to the submissions made by the learned counsel on either side and in the context of two persons dying in unnatural circumstances on the same day and at the same time, we paid our utmost attention to the various materials on record. Admittedly and there is no dispute on this fact that there is no direct evidence to show that the accused administered poison which he had with him by mixing it with Mirinda cool drink and then diluting the brandy with the said poisoned cool drink. However, the fact remains that Karuppannasamy and Ponnusamy died due to nitrite poisoning.

P.W.16 is the doctor, who did postmortem on the dead bodies and Exs-P12 and P15 are the postmortem reports of D2 and D1. The respective final opinions are Exs-P13 and P16. In between, the report on viscera and hyoid bone had come and they stand proved by the oral evidence of P.W.17. The scientific expert's reports are Exs-P17 and P19, which show that ethyl alcohol and sodium nitrite were detected in the stomach and contents, intestine and contents and liver. In the kidney, nitrite was not found. P.W.17 deposed that sodium nitrite is a poisonous substance and it would have a fatal effect on the person, who consumes it. P.W.16 would also state that it is poisonous and it would have a fatal effect. Therefore, reading the evidence of the doctor P.W.16, who did postmortem; P.W.17, the scientific expert; the respective postmortem reports and the scientific expert's reports would unerringly establish that Karuppannasamy and Ponnusamy died due to poisoning. The prosecution case is that it is the accused, who administered poison. Let us examine this case with reference to the evidence available on record.

10. To show that the accused purchased brandy, P.W.22 is examined. He claims to be working as a salesman in a wine shop called " Rajadiraja Wines" owned by one Selvam of Erode. Selvam had not been examined. To a wine shop, many persons would come and go. We went through the evidence of P.W.22, who would state that on the day of occurrence, at about 2.15p.m., the accused came to his shop and purchased quarter bottle of brandy and that he knows the accused since a month before the occurrence day, which was on 22.5.2000. Assuming that the accused had gone to the shop for a couple of times or more than a couple of times in May, 2000 to buy liquor, yet, we are unable to understand as to how P.W.22 could distinctly remember when he gave evidence in Court or even when he gave the statement to the police during investigation on 24.6.2000 that the accused came and purchased a brandy bottle. To a shop where liquor is sold, innumerable people will come and go and unless the customer is a person known either to the owner or to the salesman, it is not possible to conclude that the salesman namely, P.W.22 would remember precisely that the accused came to his shop on the day of occurrence to buy brandy. There is also nothing on record to show that P.W.22 is employed in the wine shop at all. There is no documentary evidence to show that on such and such a day, quarter bottle of brandy was sold by P.W.22 to the accused. Therefore, even at the threshold, we have a doubt about the credibility of the evidence of P.W.22. Then, we have the evidence of P.W.9, who had been examined to show that at about 2.30p.m. on the day of occurrence, the accused passed his shop with a brandy bottle and 500ml of Mirinda bottle. No witness had been examined to prove that on the day of occurrence, the accused purchased Mirinda cool drink bottle. P.W.9 was examined by the police during investigation on 25.5.2000 and his statement had reached the court only on 4.9.2000. P.W.9 would state that at the time when he saw the accused as referred to above, he was having 500ml of Mirinda bottle and a quarter bottle of brandy. There is nothing unusual in any person carrying a Mirinda cool drink bottle and a brandy bottle. Since, there is nothing unusual about it, we do not understand as to why P.W.9 should put a specific question to the accused as to whether there is any occasion for which the accused seems to have replied that he is taking it for the "Dye Masters" (obviously D1 and D2). Therefore, we are not impressed with the evidence of P.W.9 that he saw the accused on the day of occurrence carrying a Mirinda cool

drink bottle and a quarter bottle of brandy. Assuming for a minute that this evidence of P.W.9 is true, even then, mere carrying of a Mirinda cool drink bottle and a quarter bottle of brandy would not amount to the accused mixing poison with Mirinda cool drink; diluting the liquor with the said cool drink and making the victims to drink. Therefore, the primary evidence of P.W.22 and P.W.9, on the aspects referred to above, is not free from doubt.

11. Inasmuch as there is no direct evidence to connect the accused with the crime and as the case has to be decided only on circumstantial evidence, we have to go only by circumstances projected by the prosecution and find out whether it constitutes a complete chain of circumstances leading to the hypothesis of guilt of the accused. Regarding the two circumstances referred to above brought through the evidence of P.W.22 and P.W.9, we have expressed our apprehension that they are not free from doubt. The next circumstance to be seen is whether the accused was present at the scene of occurrence during the relevant time. This can be gathered from the evidence of P.W.s 4 to 6. P.W.4 is the owner of the printing press. He would state throughout the day in question, he did not go to the printing press. In any event, during the relevant time, when the accused is shown to have given the poisoned drink to the victims, he did not claim to be there. He also do not say that the accused reported for duty on that day. Therefore, the evidence of P.W.4 is of no use at all to find out as to whether the accused was present in the factory at any point of time on the day of occurrence including the relevant time. Then,w e come to the evidence of P.W.5, nephew of P.W.4. He would state that the accused was present in the forenoon. He was present even at 2p.m. when P.W.5 went for lunch. He would state that P.W.6 was also there with him at that time. He would further state that at 3 .45p.m., the accused informed him over telephone about the twin deaths in this case. He does not speak about the movement of the accused in the factory from 2p.m. onwards. The charge is that the twin deaths were caused at or about 2 .15p.m. on 22.5.2000. Therefore, the evidence of P.W.5 is of no use at all as it does not show that the accused was seen in the factory premises after 2p.m. P.W.6 has some business connection with P.W.s 4 and 5. His evidence is that he reached the factory at about noon time and he was talking with P.W.5 till about 2p.m. Then, he took a short snap from 2.15p.m. to 2.45p.m. and when he opened his eyes at 2.45p.m., he found both the deceased working. He asked them to continue the work and then continued his sleep. He would state that at 3.30p.m., the accused told him about both the victims lying drowned in the water tank. In his evidence in cross-examination, he would state that when he woke up at 2.45p.m. and noted both the victims working, the accused was not there. Therefore, on an important aspect namely, the presence of the accused at or about the time of occurrence in the factory premises when both the victims appear to have consumed poisoned drink is not established at all. Thus, the most vital component in the chain of circumstances namely, the presence of the accused in the factory during the crucial time is definitely missing in this case. Therefore, we have to state even at this stage that the chain of circumstances, if at all there is any, gets severed abruptly due to the fact that there is no evidence at all about the presence of the accused at the scene of occurrence during the relevant time.

12. The Honourable Supreme Court of India in the judgment in RAMGOPAL V. STATE OF MAHARASHTRA reported in AIR 1972 SC 656 held that "in deciding a case of murder by poisoning, the prosecution must establish that the deceased died of the poison in question; that the accused had that poison in his possession and that he had an opportunity to administer that poison to the deceased and only then, the court can infer that the accused administered poison to the deceased resulting in his death." The Supreme Court had also said that "if motive is projected as a circumstance in a criminal case, then it must also be fully established like any other incriminating circumstance when the murder is shown to have been committed by administering poison." In this case, we have already concluded that both the deceased are shown to have died of poisoning. Therefore, one limb of the test laid down by the Supreme Court stands satisfied. The two other limbs are that the prosecution must establish that the accused had that poison in his possession and that he had the opportunity to administer the same to the victims. Without any hesitation, even at this stage, we can say that there is no evidence at all to show that the accused had the poison in his possession. Sodium nitrite is the poison stated to have been mixed in the Mirinda cool drink. P.W.5, in his evidence in his cross-examination would state that about a month prior to the occurrence day, to poison stray dogs entering the factory premises, he asked Karuppannasamy (D1)to buy nitrite poison which he accordingly purchased and gave it to him. He does not say that when he gave such an order to Karuppannasamy and when Karuppannasamy purchased the poison and gave it to him, the accused was by his side. In any event, there is no evidence to show that the accused was aware of such poison being available with P.W.5. There is nothing on record to show as to whether the poison so purchased by P.W.5 was fully utilised or partly utilised and if partly utilised, whether the balance was kept inside the factory or anywhere else. There is also nothing on record to show, assuming the poison was not utilised at all or utilised only in part, that the poison was stored in a place known to the accused. To put it in a nut-shell, we have to say from the evidence available on record that the accused had no knowledge about either the purchase of poison by P.W.5 as referred to above or its utilisation in full or in part or storing the poison in entirety or the balance in a place known to the accused. If that is so, then there is no other evidence to show from where the accused had come to possess the poison in question. No witnesses have been examined regarding this aspect. In the light of the above facts, we have to once again state that the second limb of the test laid down by the Honourable Supreme Court of India in the judgment cited supra namely that the accused should be shown to be in possession of the poison is also not established. On the third requirement of proof, as referred to above, we have already held that there is no evidence to show that the accused was available in the factory premises or anywhere near the factory premises during the relevant time namely at or about 2.15p.m on 22.5.2000 , which alone would have given him an opportunity to mix poison in the Mirinda cool drink and diluting the brandy with it, he had given it to the victims with the same. So, the third limb of the requirement of proof in a case of murder by poisoning is also not established in this case.

13. In SHARAD V. STATE OF MAHARASHTRA reported in AIR 1984 SC 1622, the Supreme Court exhaustively laid down that in a case of committing murder by administering poison, the mode and manner of proof

required and they are as hereunder:
(1) a clear motive for the accused to administer poison to the deceased;
(2) the deceased died of poison stated to have been administered;
(3) the accused had the poison in his possession;and
(4) he had an opportunity to administer the poison to the deceased.
On the requirements indicated as (2), (3) & (4) above, we have held that the prosecution had failed. Therefore, we must now apply our mind to the motive projected by the prosecution namely, the accused having an illicit affair with a co-worker by name Sumathi; Ponnusamy (D2) being the cousin of Sumathi reprimanding the accused for such an illicit affair; both the deceased often making fun of the accused with reference to his disability (he limps); the accused complaining to P.W.4 about that and P.W.4 bringing peace between these three. P.W.1, in her evidence in cross-examination had cate gorically admitted that the accused and both the deceased had no difference of opinion at all and they were moving like good friends. P.W.2, in his evidence in cross-examination would state that the accused even comes home,takes food and then goes. P.W.3, a co-worker of the accused as well as the deceased would state that though both the deceased used to make fun of the accused, yet, such making fun is only of a casual nature and definitely not with an intention to hurt him. P.W.3 would also admit in her evidence in cross-examination that the accused used to move with everybody in a cordial and conducive manner. Therefore, from the evidence of P.W.s 1 to 3, it cannot be said that the accused had developed any hatred against any of the deceased. Therefore, that portion of the motive namely, the accused developing hatred towards the deceased is without any basis. We go on to the next portion of the motive namely, the accused having an illicit affair with Sumathi, which was reprimanded by Ponnusamy (D2), who is said to be her cousin. P.W.1 is the mother of Ponnusamy and she nowhere whispers that the accused was having any affair with Sumathi, which was not liked to by Ponnusamy or even by her. As already stated, there is no whisper either in Ex-P1 complaint or even in her evidence about the illicit affair of the accused with Sumathi. P.W.23, the investigating officer, in his evidence in cross-examination, would admit that P.W.1 did not disclose during investigation anything about her relationship with Sumathi. Therefore, when a thick relative namely P.W.1 is silent about this aspect, we are not inclined to attach any importance to the oral evidence of P.W.3 and others, who would say in a vague manner that the accused was having an illicit affair with the co-worker Sumathi and that was not liked to by her cousin Ponnusamy (D2). As already stated, in a case of murder based on circumstantial evidence, motive assumes a considerable importance. A Bench of this court in the judgment in M. S. MANI V. STATE reported in 1989 Crl.L.J. 1703 held that "the motive putforth by the prosecution to commit the murder is found to be not strong enough for the accused to harbour a desire to kill the deceased and when there is no evidence to show that the accused added poison to the liquor served to the deceased, the case of the prosecution must fail and if there is any confession made by the accused, it is also doubtful." Assuming the prosecution has shown the motive to be accepted, as already held by the Honourable Supreme Court of India, in the judgment in SURINDER KUMAR V. STATE OF PUNJAB reported in AIR 1999 SC 215, "in the absence of any other connecting circumstance, presence of motive alone would not further the prosecution case", we have to hold that the projected motive pales into insignificance in the backdrop of total absence of other circumstances.

14. We next go to the extra judicial confession stated to have been recorded by P.W.12, the extra judicial confession being Ex-P4. We perused Ex-P4 being aware of the fact that by nature, it is a weak piece of evidence and therefore, caution must be in the mind of the Court. We are also aware of the fact that if the extra judicial confession is found to be reliable and trustworthy, then there will be no harm in basing the conviction on the said piece of evidence alone. The manner and the way in which the preamble portion of this statement came to be recorded itself opens the floodgate to doubt the confession statement of the accused. P.W.12 is a layman. He admits that he had studied upto X standard. He nowhere says that he has the expertise to act in a situation where a person appears before him and gives an extra judicial confession. In other words, P.W.12 is an ordinary person as any other ordinary person. We put ourselves in the position of P.W.12 and visualised as to what we would have done as ordinary persons, if the accused appears before us and confesses his guilt. Even in such a situation, we have no doubt at all that we would not have been in a position to write the preamble to the confession statement as has been done in this case. The preamble portion of the confession statement gives the full details of P.W.12; the father's name of the his friend; his adoptive father's name; the business, which they were doing about which they were talking at that time; the details of the work place of the accused and his designation in that workplace; the designation of both the deceased; the prior en mity which the accused claims to have had and how he proceeded to deal with the situation thereafter. Therefore, even at a first look at the confession statement, we have no doubt in our mind that P.W.12 would not be a competent person to draft the preamble to the confession statement as has been done in this case, which leads to the inference that somebody else was behind the drafting of the confession statement. It may be noticed here that the accused had denied of giving such confession statement when he was questioned under Section 313 Cr.P.C. He had also crossexamined P.W.12 at length to discredit the confession statement. The accused is shown to have appeared before P.W.12 at about 9p.m. or 9.1 5p.m. on 25.5.2000, which means that the accused must be a free man without any restriction. But, it does not appear to be so since the evidence shows the contra. P.W.4 would state in his evidence in cross-examination that two days after the occurrence i.e., 24.5.2000 (the occurrence was on 22.5.2000), the accused confessed to the investigating officer about his involvement in the crime and thereafter, the police did not allow the accused to go out of their custody at all. P. W.5 would state that the accused was at the scene of occurrence when he reached there. P.W.7, an independent witness would state that he reached the scene of occurrence at about 7p.m. on the day of occurrence itself. When he reached the scene of occurrence, he did not see P. W.s 4 and 5. He would add that the police present there made the accused to sit in one corner. P.W.9, again an independent witness, would state that when he went to the police station at about 10 or 11p.m. on 22.5.2000, the accused was there. Therefore, reading the evidence of the above three witnesses, it is clear that the accused was not a free citizen to move around without restriction right from the day of occurrence. It must be noticed that the name of the accused is mentioned in Ex-P1 as a suspected person. This is a case of double murder. In such circumstances, it is beyond one's comprehension as to how the police, who had arrived at the scene immediately and the accused also being present

throughout, would have failed to arrest him. The reason is obvious in our opinion and ie., the prosecution was not sure to fix the responsibility and therefore, since the name of the accused is mentioned in Ex-P1, they were keeping him under their custody without showing arrest and once, the extra judicial confession was brought into existence,the arrest is shown. If the extra judicial confession is true, then we fail to understand as to how the investigating officer could have examined P.W.9 at about 11a.m. on 25.5.2000 (P.W.9 says so). Only the extra judicial confession would have enabled the police officer to fix P.W.9. Since the extra judicial confession is shown to have been recorded only during night, the examination of P.W.9 in the morning of that day itself shows the falsity of the extra judicial confession. Therefore, connecting all the loose ends together, it is clear that the extra judicial confession relied upon by the prosecution is not true and voluntary and not beyond the realm of doubt. In any event, the accused was in police custody right from the day of occurrence till the extra judicial confession came to be recorded. P.W.12, in his evidence would state that on he giving the information to the police, after recording Ex-P4, police came to his house before whom he produced the accused as well as the extra judicial confession. In his evidence in cross-examination, he would state that the police came to his house between 10 and 11p.m. P.W.13 would admit that he went to the house of P.W.12. Having regard to the totality of the materials available on record, we are of the considered opinion that Ex-P4 could not have come into existence as spoken to by P.W.12 and would have definitely come into existence only due to the intervention of the investigating officer and P.W.13. In our opinion, P.W.4 has no regard for truth and there is no doubt about it. P.W.s 1 and 2 would state that the respective deceased complained to them that P.W.4 was not paying the salary and there was difference of opinion over that. Even in Ex-P1, P.W.1 stated that her son was complaining that his employer P.W.4 was not paying salary and on account of that, the relationship was strained. As already stated, as against the substantive evidence of P.W.s 1 and 2 that the respective deceased were complaining about non-payment of salary by their employer, P.W.4 would try to say that he is not in arrears of salary to either of the victims. We are only stating this to show that P.W.4 has no regard for truth. We also find from the evidence on record that the accused was available at the scene of occurrence and in the vicinity of all the people right from the time he informed P.W.6 about both the victims found drowned in the water tank. To reiterate, we state that he was found at the scene of occurrence from 3.45p.m. onwards; it is he who runs to the house of P.W.1 and informs her about the death of her son; it is he who informs P.W.2 about the death of his son; it is the accused, who informed P.W.5 over telephone about both the employees found drowned in the water tank; it is he, who runs out to get an autorickshaw; he goes to the police station along with others to give a helping hand to the police to lay their hands on the culprit and he never absconded. If really the accused is guilty of murdering two people by administering poison, then the normal conduct of such an accused would be to screen himself from the eyes of all. It is all the more so since, if he is really guilty, his guilty conscience would go on pricking him especially, when his name finds place in Ex-P1 as a suspected one and when the police had arrived at the scene within a few hours after the occurrence. Why we are saying this is the conduct of the accused in this case leans in his favour to show that he may not be guilty at all and in all probability, he is innocent.

This conduct of the accused is a relevant fact that can be taken into account while deciding the case based on circumstantial evidence.

15. For all the reasons stated above, we have no doubt at all in our mind that the prosecution had not established any chain of circumstances and therefore, their case must fail. Law is well-settled that when a case has to be decided on circumstantial evidence, then a duty is cast upon the prosecution to establish all the circumstances, which will form a complete chain pointing to the guilt and guilt of the accused alone and not any other hypothesis. But, in this case, we hold that the prosecution miserably failed even to establish one circumstance and therefore, there is no question of a chain of circumstances established in this case pointing to the guilt of the accused. On the other hand, everything is in favour of the accused. Consequently, holding that the judgment of conviction is without any legal evidence, we are inclined to set aside the same and acquit the accused of the charges for which he was tried and convicted. The appeal is accordingly allowed.

Index: Yes
Internet: Yes

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To
1. The Prl.Sessions Judge, Erode.
2. The Dist. Collector, Erode.
3. The Superintendent,Central Prison,
Coimbatore.
4. The Director General of Police,
Chennai.
5. The Inspector of Police,
Karungalpalayam Police
Station, Erode Dt.
6. The Public Prosecutor,
High Court, Madras.